IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 942 of 1996
with
SPECIAL CIVIL APPLICATION No. 1424 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.K RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI ATMARAM PATEL

Versus

FACTORY MANAGER

Appearance:

GIRISH PATEL for Petitioner-Workman

KAYUR GANDHI for Mr K.S Nanavati for Respondent No. 1

Spl. Civil Application No. 1424 of 1996

Kayur Gandhi for Mr. K.S Nanavati for Petitioner

Nigam Shukla with P.M Vyas, Meena Raval & Ms. Rekha Kapadia for respondents.

CORAM : MR.JUSTICE H.K RATHOD

Date of decision: 20/04/2000

COMMON C.A.V JUDGEMENT

At the outset, it would be pertinent to mention that Special Civil Application No. 942 of 1996 is filed by the petitioner-Workman, and Special Civil Application No. 1424 of 1996 is filed by the Mill-Company. In both these petitions, the order dated 21.10.1994 passed by the Labour Court, Ahmedabad as well as order dated 4.12.1995 passed by the Industrial Court, Ahmedabad are under challenge, therefore, both these petitions are heard and decided by this common judgment.

2. The brief facts of both these petitions are as under :-

2.1 The petitioner-New Shorrock Mills Limited [hereinafter referred to as `the said Company'] is a division of Mafatalal Industries Limited and the respondent-Rameshbhai Atmaram Patel [hereinafter referred to as, `the workman'] was working as a Junior Assistant [Sales Section] on a basic pay of more than Rs. 1,000/= besides dearness allowances and other perks. The respondent was issued a chargesheet for various misconducts committed by him for misbehaving with his superiors, rude behaviour with the customers, shouting against his head Shri Vyas, while on duty, and tempering with STD telephone bills, etc. On 5th February, 1990, a written explanation was filed by the respondent-workman and thereafter, departmental inquiry was held against him. In the said departmental inquiry, the charges of misconducts levelled against the workman were proved by the Inquiry Officer. As per the findings given by the Manager holding the inquiry, the workman was ordered to be dismissed from service on 5th November, 1990. Feeling aggrieved, the respondent on 11th February, 1991 had challenged the order of his dismissal under Sections 78 and 79 of the Bombay Industrial Relations Act, 1946 before the Labour Court at Ahmedabad. The said application challenging the order of his dismissal was numbered as Application No. T.85 of 1991. Before the Labour Court, the mill-company had filed their written statement on 6th April, 1992 and the workman had also filed purshis declaring the fact that he was not challenging the legality and validity of the departmental inquiry initiated against him and he agrees to abide by the inquiry held. Similarly, the mill-company also filed a purshis withdrawing its legal contentions taken before the Labour Court. Thereafter, the Labour Court has considered the evidence available on record and passed an order dated 21st October, 1994 declaring that looking to

the gravity of misconduct, the punishment of dismissal of the workman is too harsh and disproportionate, considering the length of service of the workman and totally dotless service tenure of about 25 years with the mill-Company. Therefore, the Labour Court has been pleased to grant reinstatement with continuity of service and 40% of backwages for the interim period. The Labour Court has withheld 60% of the backwages of the workman by way of penalty. Being aggrieved and dissatisfied by the said order of the Labour Court, Ahmedabad, both - the Mill-Company as well as workman concerned have moved the respective appeals being Appeal No. 58 of 1994 and 62 of 1994 before the Industrial Court at Ahmedabad. The Industrial Court, after considering the contentions raised by the respective parties, on 4th December, 1995 came to the conclusion that the order passed by the Labour Court is legal and valid and no interference is required to be made, and as a result thereto, both the appeals filed by the respective parties came to be dismissed.

2.2 Feeling aggrieved by these orders, the workman had moved this Court by filing Special Civil No. 942 of 1996 and the Mill-Company has preferred Special Civil Application No. 1424 of 1996. Both these writ petitions have been admitted by this Court and by way of interim direction, the mill-company has been directed to pay the last wages drawn to the workman under the provisions of Section 17-B of the Industrial Disputes Act, 1947 [hereinafter referred to as, `the Act']. However, the order of payment of 40% of the backwages to the workman has been stayed till the final hearing and disposal of these writ petitions. The said order is made in Special Civil Application No. 1424 of 1996 on 20th April, 1996. In the said Order dated 20-4-1996, there is a mention with regard to exchange of some thoughts between the parties to arrive at a settlement wherein the mill-Company had offered an amount of Rs. 2,64,653/- to the workman, considering the formula laid down by the Supreme Court in ..... vs. .... reported in AIR 1987 SC 111, however, the respondent had sought employment on a trial basis. But, ultimately the said settlement could not be worked out between the parties and the matter is pending for final adjudication before this Court since 1996. In Special Civil Application No. 1424 of 1996, affidavit-in-reply has been filed by the respondent-workman and in Spl. Civil Application No. 942 of 1996, the mill-company has not filed any reply against the said petition. According to Mr. Gandhi, the mill-Company has paid last drawn wages to the

respondent-workman, as provided under Section 17-B of the Act from December, 1995 till December, 1997, which comes to an amount of Rs. 1,39,000/=. Mr. Gandhi, learned advocate challenges the orders passed by the Labour Court and the Industrial Tribunal on the grounds inter alia that the Labour Court has committed gross error in not deciding the first condition whether considering the gravity of the misconduct and seriousness of the charges, the punishment imposed by the mill-Company is harsh or not or disproportionate or not. According to him, it is condition precedent. Therefore, according to learned advocate Mr. Gandhi, the Labour Court ought to have considered the said question first before exercising its powers under the provisions of the Industrial Disputes Act. He further submitted that the Labour Court has only mentioned the arguments advanced by the learned advocate appearing on behalf of the respodent-workman, and there is no independent finding given by the Labour Court in respect to the gravity of misconduct, seriousness of charge whether it requires the punishment of dismissal of the workman or not. He further submitted that looking to the charges levelled against the respondent-workman and its seriousness, the punishment of dismissal from service is quite reasonable, just and proper and it was necessary for the Labour Court to consider the length of service and past record of the respondent workman, as the said facts had no relevance with the seriousness of charges and the quantum of punishment. Mr. Gandhi read over the entire order passed by the Labour Court and pointed out that the Labour Court has only considered the clean record of the workman and the length of services rendered and had passed the order of reinstatement with continuity in service and 40% backwages for the interim period. Therefore, according to him, the Labour Court has not applied its mind and had committed gross error and thereby exceeded its jurisdiction which it does not possess under the law, and therefore, that order of the Labour Court is required to be set-aside. In support of his contentions, Mr. Gandhi has relied upon decisions of Madras High Court in the matter of Godrej & Boyce Manufacturing Company Limited, Madras vs. Presiding Officer, Labour Court, Madras & Anr., reported in 1998 I.LL.J p-117 wherein it has been held that, `the powers under Section 11-A of the Industrial Disputes Act, 1947 has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of the management under the said Section only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the employee.' He has also placed reliance upon the decision of the Apex Court in the

matter between Palghat BPL & PSP Thozhilali Union v. BPL India Limited & Anr., reported in [1996 (2) LLJ 335]. In the said decision, it has been held by the Supreme Court that, `the Labour Court had discretion under Section 11-A of the I.D Act to consider the quantum of misconduct and the punishment wherein any act subversive of discipline committed outside the premises is also misconduct. He has further relied upon yet another decision of the Apex Court in the matter of Orissa Cement Limited v. Adikanda Sahu [1960 I LLJ 518]. The said decision rendered by the Apex Court relates to Section 33 of the I.D Act wherein the workman was charged with the misconduct of abusing his superior officer on two occasions by using vulgar and filthy language and the explanation offered by the concerned workman was disbelieved by the employer and on the strength of the report by the enquiring officer, who considered the explanation of the concerned workman without holding any domestic inquiry, the employer applied for permission under Section 33 of the Industrial Disputes Act to dismiss the concerned workman. The Industrial Tribunal has come to the conclusion that the concerned workman was found guilty of the misconduct alleged against him, however, the permission prayed for was refused on the ground that the concerned workman had tendered apology to the concerned officer. The said order passed by the Industrial Tribunal refusing the permission has been set-aside in appeal by special leave by the Apex Court. He further placed reliance upon a decision rendered by the Full Bench of Rajasthan High Court in the matter of Rajasthan State Road Transport Corporation Limited v. Gopal Singh & Another, reported in [1998 Lab. I.C 664]. In the said decision, it has been held that, `even if the misconduct is proved either in domestic inquiry or before Labour Court itself, there can be an interference by Labour Court for good and sufficient reasons under Sec. 11-A. The Labour Court is vested with the discretion in the matter which is to be judicially exercised.' It is also held that, `interference by the Labour Court while exercising power under Section 11-A is permissible only when punishment imposed by Management was found to be shocking, disproportionate to the degree of guilt of the workman concerned. It cannot be equated with the power of `veto'. Mr. Gandhi has also relied upon the decision of Karnataka High Court in the matter of D. Padmanabhudu v. Bank of India & Anr., reported in [1995 (1) LLJ 1076] wherein it has been held that, `the Labour Court had misdirected itself while exercising power under Sec. 11-A by taking a lenient view as can be seen from the observation that the amount misappropriated did not belong to the Bank but it belonged to the consumers.

Once inquiry is properly held and the Management has thought fit to pass an order of dismissal considering the nature and gravity of the act committed by the employee, it is not for the Court including the Labour Court to interfere with such orders of the management.' Thereafter, Mr. Gandhi placed reliance upon one judgment rendered by the Bombay High Court, two decisions of the Gujarat High Court and one by the Punjab & Haryana High Court. In all these cases cited by Mr. Gandhi, the Courts have considered the powers under Sec. 11-A and held that such a power can be judicially used by the Labour Court and it can interfere with the decision of the management only when the punishment imposed is highly disproportionate to the degree of guilt of the workman.

Learned advocate Mr. Patel appearing on behalf of the workman has submitted that the facts of the case are required to be kept in mind while deciding the validity of the order passed by the Labour Court. He submitted that the workman had joined services as a Clerk in the year 1965, thereafter, he was transferred in the year 1985 as a Junior Assistant in another department and in all he had completed 25 years' service and during his entire service, not a single misconduct has been reported against the workman and all of a sudden, the petitioner mill-Company has been served with a chargesheet dated 25th January, 1990. In the said chargesheet seven misconducts have been enumerated against the workman, however, no dates of committing such misconducts is mentioned, therefore, it would not be just to label the workman as a habitual offender. According to Mr. Patel, all these incidents have been clubbed together just to victimize the workman because Shri H.N Vyas had some grievance against the workman. The said Shri Vyas was transferred to the Sale Section as a Branch Manager and soon thereafter Shri Vyas developed no good terms with the respondent-workman. It was contended that Shri Vyas was transferred to Sales Section in the year 1988 and prior to that, for about 8 months, no one was heading the Sales Section as a Branch Manager and that work was being carried out and satisfactorily performed by the respondent workman. Therefore, the Court has considered the fact that only after Mr. Vyas joining the Sales Section, these activities came to be started against the respondent workman which amounts to clear victimization of the workman concerned. Learned advocate Mr. Patel pointed out that even in the findings given by the Inquiry Officer, the dates of misconduct committed by the respondent-workman in respect to seven misconducts enumerated in the chargesheet have not been mentioned. According to Mr. Patel, the Labour Court had applied its mind in respect to the chargesheet given to the workman

and had also considered the gravity and seriousness of the misconduct and has thereafter rightly passed the order in question. Mr. Patel submitted that if an employee was found good for a period of twenty five years of his service then how all of a sudden he came to be considered bad employee. Thus, according to Mr. Patel, the order of punishment dismissing the workman is definitely harsh and disproportionate with the charges levelled against him. He further submitted that out of the seven charges levelled against the respondent workman, none of the charges relates to dishonesty and/or misappropriation of funds or doubtful integrity. According to Mr. Patel, it is a temperamental misconduct committed by a small workman of a large mill-Company and in such circumstances, the role of the employer must be that of a prudent employer, however, instead of that, the petitioner-mill has acted in an arbitrary manner and victimized the respondent-workman by dismissing him from service, ignoring the two important factors viz., the long 25 years' service tenure and the clean past performance all throughout his career. And therefore, the Labour Court has rightly considered the gravity of misconduct, length of service of the workman and his clean past record and has held that the said punishment is disproportionate to the charges levelled against the respondent workman. Mr. Patel submitted that the order of the Labour Court is just, proper, reasonable and no interference is required at the hands of this Court, while exercising the power under Article 226 & 227 of the Constitution of India. On the issue of claiming remaining 60% of the backwages, learned advocate for the respondent-workman submitted that the penalty of withholding 60% of the backwages is a severe punishment which cannot be considered to be reasonable, and therefore, according to him, the respondent workman is entitled to full backwages for the interim period.

In light of the submissions made by both the learned advocates, it is first of all necessary to examine the order passed by the Labour Court in Application No. T-85 of 1991 [Annexed at page 42 of the Spl.C.A No. 1424 of 1996]. Before the Labour Court, the respondent workman was examined vide Exh. 41 wherein he has deposed that because there was some grudge with Mr. H.N Vyas, Branch Manager, he was victimized by the petitioner mill-company. Thereafter, petitioner mill-company has examined one Harivadan N. Vyas vide Exh. 49 and since there was no further evidence from the petitioner's side, vide Exh. 50, their evidence was closed. The Labour Court heard both the learned counsel appearing for the respective parties and framed three

issues viz., (i) whether the findings of the Inquiry Officer are in consonance with the inquiry papers; (ii) whether the penalty imposed upon the workman is proportionate to the charges levelled against him; and (iii) whether the workman has been victimized or so ? The Labour Court has discussed each and every issue in length and came to the conclusion that looking to the findings given by the Inquiry Officer and considering the length of service of the workman, and his clean past, the order of punishment of dismissal is harsh, disproportionate and unjustified. The Labour Court has also observed that the workman who had completed more than 25 years' service with all throughout clean record, then how he all of a sudden became a bad workman and why the petitioner mill-Company has not considered the case of respondent-workman for some minor punishment when the charges levelled against the workman are not such serious. The Labour Court has also considered the fact that the dismissal of the workman also adversely impact the family of the workman too and when the workman had reached the age of 51 years, and at this stage, he would not be in a position to get fresh employment elsewhere, and therefore, the punishment of dismissal from service can be said to be a economic death of the workman. Therefore, the Labour Court had though it fit to interfere with the order of dismissal by exercising powers under Section 78 & 79 of the Bombay Industrial Relations Act, 1946 and came to the conclusion that the order of punishment is required to be modified, and therefore, the Labour Court has modified the said order by granting reinstatement with continuity of service and 40% of the backwages. However, the Labour Court had denied 60% of the backwages for the interim period by way of punishment. Thereafter, in appeal, the Industrial Court has considered the findings given by the Labour Court and came to the conclusion that the Labour Court has power under Sections 78 & 79 to modify the punishment and to examine the legality and validity and propriety of the dismissal order. Relying upon the decisions in the matters of Babulal Nayak & Ors. versus Shree Synthetics Limited, reported in 1984 FLR 140; of Ved Prakash Gupta v. Delton Cables (India) Limited, LIC 1982 p-1790, the Industrial Court has considered that if an employee in a heat of moment uses filthy language or abuses his superior, it cannot be considered to be a serious misconduct in background of the long service and clean past record and in that circumstances, employer should not take a serious view and pass a dismissal order. After considering all the aspects, the Industrial Court has come to the conclusion that there was no error committed by the Labour Court and the denial to grant 60%

of the backwages to the workman is considered to be a proper punishment. The Industrial Tribunal, thus came to the conclusion that the order passed by the Labour Court does not requires interference in appeal, and therefore, both the appeals came to be rejected on 4th December, 1995.

Now, it would be pertinent to also consider the decision rendered by this Court in the matter between Union of India & Kamlesh G. Shah, reported in 1998 (1) I.LLJ p-150 wherein the Division Bench has examined the question of misconduct by an educated employee of the nationalized Bank and employee using filthy language against the superior Officer in the Bank premises during the Banking Hours. The denial of part backwages from the date of dismissal to the date of reinstatement was held just and proper. The Division Bench further held that it would be just and proper to deny the backwages to the extent of 50% from the date of dismissal till the date of reinstatement. In the said matter, the Division bench has considered various decisions of the Apex Court relating to the question involved in the present petition. In case of Ram Kishan v. Union of India & Ors [1996 (1) LLJ 982], the Supreme Court has observed in para 11 as follows :-

> `When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of the abusive language. No straight jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated.'

In matter between Prakash Gupta v. Messrs. Delton Cable India (P) Limited [1984 (I) LLJ 546], the workman was a security Inspector under the Security Officer on a total monthly salary of Rs. 581/=. He was dismissed on the charge of abusing co-worker in filthy language. There was no previous adverse remarks against the workman shown and extreme penalty of dismissal was held to be disproportionately excessive and dismissal was set aside and reinstatement was ordered with full backwages. The Apex Court held that no responsible employer would ever impose in like circumstances the punishment of dismissal of the employee and victimization or unfair labour practice could well be inferred from the conduct of the

management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the workman, and therefore, the Apex Court directed reinstatement with full backwages and other benefits including continuity of service. In the matter between Rama Kant Misra v. The State of Uttar Pradesh & Ors [1982 (II) LLJ 472], the workman was a low paid employee. It was alleged against him to have used threatening language. The Supreme Court considering that there being no blameworthy conduct of the appellant during the period of 14 years' service, he rendered prior to the date of misconduct and the misconduct consists of language indiscreet, improper or disclosing a threatening posture. When it is said that language discloses a threatening posture, it is the subjective conclusion of the person who hears the language because voice modulation of each person in the society differs and indiscreet, improper, abusive language may show lack of culture. In the matter between Scooter India Limited, Lucknow v. Labour Court, Lucknow & Ors, reported in 1989 (I) LLJ at page-71, the Labour Court had granted reinstatement with 75 per cent backwages. The Labour Court had observed that, `the workman had unfortunately to blame himself for much of the bad blood which has developed between him and the management, and therefore, his conduct, motivated by ideals which are not relevant, has been far from satisfactory, in so far as it was rought, bordering on rudeness and with highly exaggerated sense of his duties.' This was not a case where filthy abuses have been given by educated employee to his superior. Even that case, 25 per cent backwages were denied and the Hon'ble Supreme Court has confirmed the said order passed by the Labour Court, Lucknow. In the matter between Palghat BPL & PSPTU v. BPL India Limited [Supra], the Apex Court has held that, it appears that workman have attacked the officers when they were going to the Factory. They were charged with misconduct and on the submission of an ex parte report of an enquiry officer were dismissed from service. The Supreme Court held that, any act subversive of discipline committed outside the premises is also misconduct. Any act unrelated to the service committed outside the factory would not amount to misconduct. But when misconduct vis-a-vis the officers of the management is committed outside the factory, certainly the same would be an act subversive of discipline. The object appears to be that workmen need to maintain discipline vis-a-vis its management. When amount of misconduct is a question of fact. It would be decided with reference to the facts, the situation in which the act was alleged to have been committed, and the attending circumstances leading

thereto, and therefore, the Award of reinstatement with 25% of the backwages with continuity of service was found to be proper and just by the Apex Court. There is another decision of Division Bench of this Court in case of Rajnagar Textile Mills Limited v. Bharat J. Patel, reported in (1994) GCD 378. In the said decision, the Division Bench has held that, `..the question of exercising the discretion by the Labour Court and the Industrial Tribunal may be examined from the stand point of the provisions of Sections 78, 79 and 84 of the Bombay Industrial Relations Act, 1946. It is true that there is no express provision like Section 11-A of the Industrial Disputes Act, 1947 which confers power on the Labour Court and other forums created under the Industrial Disputes Act, 1947 in interferring with the order of punishment of dismissal or discharge. As provided under Section 11-A of the I.D Act, if the Court is satisfied that the order of discharge or dismissal was not just it may set aside the order of discharge or dismissal and direct reinstatement of workman on such terms and conditions as it may think fit or it may give such other relief to the working, including the award of any lesser punishment in lieu of discharge or dismissal; as the circumstances of the case may require. However, in absence of such specific provision, it does not mean that the Labour Court and Industrial Tribunal shall have no such powers under the Bombay Industrial Relations Act.

It is required to be noted that learned advocate Mr. Gandhi has formally conceded the legal situation that the Labour Court and the Industrial Tribunal, while exercising the powers under Secs. 78, 79 and 84 of the Bombay Industrial Relations have analogous powers like that of Section 11-A of the Industrial Disputes Act, 1947. So, that question has not been argued by the learned advocate Mr. Gandhi. He concedes that the position of law that the Labour Court has powers to examine the legality and propriety of the punishment imposed by the employer. Here, it is also required to be considered that in the matter between Siayed Khodar Mouhiddin v. The Chairman, Tamil Nadu Public Service Commission, Madras [1997 (2) CLR 669], the Madras High Court has held that mere use of abusive or indecorous language by a workman per se cannot be the basis of an order of removal. The punishment imposed should always depend upon the gravity of the charge levelled against the workman and also in light of the surrounding circumstances. In the instant case also, the surrounding circumstances should be kept in mind while imposing the punishment.

While dealing with the powers of the Labour Court under Section 11-A of the Industrial Disputes Act, 1947, the Division Bench of this Court in case of Gujarat State Road Transport Corporation v. Danaji Sukhaji Kodiyar, reported in 1993 (1) GCD 892=[1994 (1) GLR 87] has held that while exercising powers under Sec. 11-A of the Act, the Labour Court or the Tribunal is bound to impose some punishment. What punishment should be imposed is ordinarily the question to be decided on the basis of the facts and circumstances of each case and particularly individual circumstances of the deliquent concerned, his family background, his socio-economic background, his service record, length of service and the surrounding circumstances in which he might have been compelled to commit the misconduct are some of the factors which are required to be taken into consideration, while deciding the question of punishment. These factors would naturally very from case to case and from individual to individual. The Division Bench of this Court has also considered the decision of the Apex Court in case of Ramakant Misra {Supra}. There is one another decision of the Apex Court in the matter of Jitendrasinh Rathod v. Shri Baidya Nath Ayurved Bhawan Limited, reported in AIR 1984 SC 976. In the said decision, it has been held that, `the High Court was right in taking a view that when the payment of backwages either in full or part is withheld, it amounts to penalty. Withholding of backwages to the extent of half, in the facts and circumstances of the case, was therefore by way of penalty referable to prove the misconduct and that situation could not have been answered by the High Court by saying that the relief of reinstatement was granted on terms of withholding half of the backwages, and therefore, did not constitute penalty.

In view of the above observations made by the Apex Court as well as various High Courts and after considering the reasonings given by the Labour Court in detail, the Labour Court in terms has come to the conclusion that looking to the charges levelled against the respondent workman in Chargesheet dated 25th January, 1990, the punishment of dismissal is totally disproportionate and unjustified and harsh. So, there is a clear finding given by the Labour Court while coming to the conclusion that looking to the charge and nature of incident, the punishment is disproportionate and excessive. The Labour Court is also right in considering the surrounding circumstances, family background and socio-economic background of the respondent workman and the compelling circumstances and also the length of service and the clean past record, which has not been

disputed by the learned advocate appearing for the mill-Company. Similarly, the Industrial Court has also rightly exercised its powers and based a reasoned order and had rightly rejected both the appeals. The Labour Court has not exceeded its jurisdiction nor committed any error in respect to the jurisdiction or in respect to facts or on law. Therefore, according to my opinion, considering the nature of charges, the punishment of dismissal after 25 years continuous service of the workman having clear past record, is definitely harsh, disproportionate, excessive, and therefore, the Labour Court has rightly passed an order which in turn has been confirmed by the Industrial Court.

Now the next question which is required to be considered is whether in such circumstances, the powers under Art. 226 & 227 of the Constitution are to be exercised by this Court or not ? Considering these aspects, I am relying upon the decision of Jitendra Singh Rathode [Supra] where in the Labour Court discretion has been vested under the provisions of Section 78 & 79 in the matter of awarding relief according to the circumstance of the case. This Court, under Art. 226 & 227 of the Constitution of India does not enjoy such power though as a superior Court it is vested with a right of superintendence. The High Court is indisputably entitled to scrutinise the order of supporting Tribunals within the well established limitation, and therefore, it could in appropriate cases quash and set-aside the Award of the Tribunal and thereupon remand the matter to conduct the trial and dispose of the matter in accordance with law, with directions if any. The High Court is not entitled to exercise powers of the Tribunal and substitute the Award in place of one made by the Tribunal. It is also decided by the Apex Court in various cases that while exercising powers under Art. 226 & 227, this Court cannot act as an appellate authority and also cannot reappreciate the evidence which has been led before the lower Court. The view taken by the Division Bench of this Court in the matter of Chhagan Ranchhod Kakvava [Supra] wherein it has been held that the order of Tribunal can only be challenged if there is a jurisdictional error and High Court will not review or reweigh the evidence. Therefore, according to my opinion, this Court is having very limited powers under Arts. 226 & 227 of the Constitution of India. Thus, after considering the order passed by the Labour Court as well as the Industrial Tribunal, according to my opinion, the Court has not committed any jurisdictional error and there is no miscarriage of justice and the findings which has been recorded by the Labour Court is based upon the

documentary evidence as well as oral evidence and there is no contrary finding given by the Labour Court, and therefore, Courts below have not acted without jurisdiction nor have they passed orders in utter disregard to the evidence available on record. Therefore, the powers conferred upon the High Court under Arts. 226 & 227 are to be used in exceptional cases to avoid miscarriage of justice. In the present case, I do not find that the exercise of discretion by the Labour Court and the Industrial Court has resulted into grave injustice to the petitioner-mill Company.

In view of the above observations and decisions of the Apex Court, according to my opinion, no interference is required at the hands of this Court in the order made by the Labour Court as well as Industrial Tribunal, while exercising the powers under Arts. 226 & 227 of the Constitution of India. Therefore, both these Special Civil Applications are required to be dismissed. Rule is discharged. Ad-interim relief granted earlier stands vacated. No order as to costs.

In view of the fact that the respondent workman has been dismissed from service on 5th November, 1990 and almost 10 years have passed thereafter and both these Special Civil Applications were filed in the year 1996, therefore, considering the passage of time and the fact that the respondent workman is out of job since more than 10 years, when I am dismissing both these petitions, I am of the view that in the interest of justice, it would be proper to direct the petitioner mill-Company to implement the order passed by the Labour Court in Application No. T-85 of 1991 and pay backwages @ 40% to the respondent workman from the date of his dismissal ie., 5th November, 1990 till the date of the order i.e., 21st October, 1994. It is directed to the petitioner-mill Company to pay full wages [with upward pay revisions & revised perks] from 21st October, 1994 till the date of actual reinstatement of the respondent workman in service, after adjusting the amount which has been paid by the petitioner-Company to the respondent workman under the impugned order passed by this Court, considering the provisions of Section 17-B of the Act. All the amounts which have been directed to be paid by the petitioner Mill-Company to the respondent workman ie., 40% backwages for interim period and full wages from the date of order passed by the Labour Court dated 21st October, 1994 till the date of actual reinstatement, shall be paid within a period of 2 months from the date of receipt of certified copy of this judgment.

[H.K Rathod, J.]

Prakash*